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JUL 07 2008

OFFICE OF PETITIONS

In re Application of :
Gary Michelson : DECISION ON APPLICATION
Application No. 09/497,590 : FOR
Filed: June 6, 2000 : PATENT TERM ADJUSTMENT
Atty Docket No. 101.0044-03000:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed May 29, 2008. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one thousand one hundred ninety-three (1193) days to one thousand two hundred twenty-one (1221) days.

The application for patent term adjustment is **DISMISSED**.

For the reasons stated herein, the Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is one thousand one hundred eighty (**1180**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 18, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 1193 days. On May 29, 2008, applicant timely submitted the instant application for patent term adjustment¹. In effect, applicant contends that the date of mailing of a non-final Office action on August 28, 2006, and not the date of mailing of a final Office action on June 23, 2006, should be used in calculating the Office delay for taking action in excess

¹ PALM records indicate that the Issue Fee payment was also filed on May 29, 2008.

of four months to respond to their response after non-final Office action filed March 31, 2006. On that basis, applicant requests entry of a 28 day period of adjustment for Office delay.

Applicant's argument has been considered, but is not well taken. Pursuant to 37 C.F.R. § 1.702(a)(2),

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

(2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

On March 31, 2006, applicant filed a response to a non-final Office action. On June 23, 2006, the Office mailed a final Office action. This was within four months. Thus, no period of adjustment was entered for Office delay pursuant to 37 CFR 1.702(a)(2).

On March 31, 2006, applicant also filed a PETITION UNDER 37 C.F.R. §1.144, requesting modification of the restriction requirement. The examiner construed the petition as a request for reconsideration and in finding petitioner's points of argument persuasive, granted applicant's requests in the non-final Office action mailed August 28, 2006. The examiner's subsequent reconsideration and mailing of a non-final Office action does not negate the fact that the Office first took action in this application within the meaning of § 1.702(a)(2) on June 23, 2006. The mailing of another Office action on August 28, 2006 does not constitute Office delay.

However, a review of the application history reveals that correction of the initial determination of patent term adjustment is required. The review revealed a basis for entry of an additional period of reduction for applicant delay. 37 CFR 1.704(c)(8) provides that:

Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in

which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

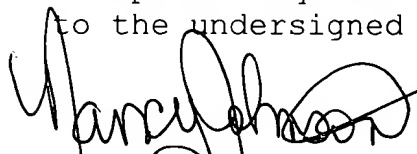
In this instance, after filing a response on June 17, 2007, on June 30, 2007, applicant filed a supplemental response. The record does not support a conclusion that this supplemental response was expressly requested by the examiner. Accordingly, an additional period of reduction of 13 days is being entered for applicant delay pursuant to 37 CFR 1.704(c)(8).

In view thereof, the determination of patent term adjustment at the time of the mailing of the Notice of Allowance is one thousand one hundred eighty (1180) days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Day : Wednesday

PALM INTRANET

Date: 7/2/2008

Time: 10:21:12

PTA Calculations for Application: 09/497590

Application Filing Date:	06/06/2000	PTO Delay (PTO):	1321
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	128
Post-Issue Petitions:	0	Total PTA (days):	1180
PTO Delay Adjustment:	-13		

File Contents History

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		FILED			
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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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